STATE OF MICHIGAN

IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEALS AND THE WORKERS' COMPENSATION APPELLATE COMMISSION

JOSEPH A. BARNOWSKY,

Plaintiff-Appellee,

vs

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

Supreme Court: 120768

Court of Appeals: 231169

Lower Court: WCAC
Docket No: 00-0183

BRIEF ON APPEAL -- PLAINTIFF-APPELLEE

MARTHA M. GLASER (P37678)
Attorney for Plaintiff-Appellee
7 West Square Lake Road
Bloomfield Hills, MI 48302
(248) 473-1441

DARYL ROYAL (P33161)
Attorney Of Counsel to Martha M. Glaser,
Attorney for Plaintiff-Appellee
22646 Michigan Avenue
Dearborn, MI 48124-2116
(313) 730-0055

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STATEMENT OF BASIS OF JURISDICTION

Although defendant has included in its brief no statement of the basis for this Court's jurisdiction, plaintiff does not dispute that the Court has jurisdiction pursuant to MCL 418.861a(14) and MCR 7.301(A)(2).

STATEMENT OF QUESTIONS PRESENTED

I

SHOULD THE WORDS "REASONABLE" AND "NEEDED" BE GIVEN THEIR PLAIN MEANING, NOT A DEFINITION REACHED ONLY BY TORTURED GRAMMAR AND A LACK OF COMMON SENSE?

Plaintiff-Appellee answers "YES."
Defendant-Appellant answered "NO."
The Court of Appeals answered "YES."

II

DID DEFENDANT'S DUTY TO PAY MEDICAL EXPENSES FOR PLAINTIFF'S MENTAL DISABILITY ARISE WHEN HE RECEIVED A PERSONAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT?

Plaintiff-Appellee answers "YES."
Defendant-Appellant answered "NO."
The Court of Appeals answered "YES."

III

IS RES JUDICATA NO BAR TO PLAINTIFF'S CLAIM FOR PSYCHOLOGICAL TREATMENT EXPENSES, WHERE DEFENDANT'S DUTY TO PAY SUCH EXPENSES WAS CONFIRMED BY THE MAGISTRATE'S ORIGINAL FINDING OF A MENTAL DISABILITY PERSONAL INJURY AND NO FURTHER, EXPRESS ORDER WAS REQUIRED?

Plaintiff-Appellee answers "YES."
Defendant-Appellant answered "NO."
The Court of Appeals answered "YES."

STATE OF MICHIGAN

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Defendant-Appellant.

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Court of Appeals: 231169

Lower Court: WCAC Docket No: 00-0183

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

(Numbers in parentheses shall refer to pages of Defendant-Appellant's Appendix on Appeal.)

In May of 1995, plaintiff Joseph Barnowsky filed his initial application for workers' compensation benefits, seeking such benefits based upon a claim of disabling upper extremity and emotional problems arising out of and in the course of his employment with defendant General Motors Corporation (1a-2a). A decision was subsequently issued by Magistrate Susan B. Cope on December 16, 1996, finding that plaintiff had proven that he was disabled by both carpal tunnel syndrome of the right wrist and emotional problems (10a-13a). As a result, the magistrate ordered that weekly wage loss benefits be paid by defendant (7a,13a). In addition, the magistrate expressly

directed defendant to pay for "[r]easonable and necessary treatment of plaintiff's right wrist, subject to cost containment rules" (7a). Neither her order nor her opinion specifically directed defendant to pay for psychiatric care, although such care was never excluded by the order or opinion.

Defendant filed an appeal with the Workers' Compensation Appellate Commission ["WCAC"], leading to an opinion and order dated January 6, 1999 (14a-18a). The WCAC affirmed the magistrate's decision, modifying it only as to the average weekly wage found by the magistrate (14a). Plaintiff attempted to raise the issue of whether psychiatric care should have been expressly ordered by the magistrate, but the WCAC held that this request for relief was not timely preserved (17a). The WCAC did not find that psychiatric care was unnecessary, however.

Thereafter, plaintiff filed a new application under date of September 15, 1999, seeking a late payment penalty because defendant was refusing to pay her psychological treatment bills (19a-20a). Although the application named Dr. Richard Atkins as the party not being paid (20a), it was noted in the ensuing decision that "off-the-record conversations with the parties clarified that plaintiff was actually seeking payment for visits with his treating psychologist, Peter Keelin, Ph.D., in view of the fact that his emotional condition had been found to be compensable" (22a). Dr. Keelin had been the psychological expert previously relied upon by the magistrate in finding that plaintiff's emotional problems were disabling and work-related (12a).

In a decision mailed on March 30, 2000, Magistrate Cope directed defendant to pay for the psychological care, writing:

> "The order and opinion provided for treatment of plaintiff's right wrist condition, but was silent on the issue of treatment

> with Dr. Keelin. Nevertheless, nothing in the opinion or the order for treatment of the wrist suggested that treatment of the emotional condition was not reasonable or necessary or was otherwise to be excluded. As in Hinton [v *Jonesville Video Connection*, 1999 Mich ACO 1134; 1999 ACO #258], the parties were told in an off-the-record discussion that the undersigned fully intended to order such treatment and had inadvertently neglected to do so. In accordance with Hinton, I find plaintiff entitled to reasonable and necessary treatment of his emotional condition subject to cost containment rules." (23a)

Because an ongoing dispute existed over defendant's liability for these bills, plaintiff's request for a late payment penalty was denied (23a).

Defendant subsequently filed an appeal with the WCAC, which led to an order dated November 2, 2000, reversing the magistrate's decision (24a). The WCAC held that plaintiff's attempt to have the psychological treatment bills paid was barred by res judicata, writing:

> "Here, in contrast to *Hinton*, the 'green sheet' was not left blank. Instead, the magistrate very explicitly and precisely ordered the payment of particular medical benefits (those related to treatment of plaintiff's right wrist) in both the opinion and on the 'green sheet' order form. The magistrate specifically delineated which medical benefits were to be paid by defendant. Under such circumstances, plaintiff had an obligation to appeal the narrowness of the medical award to the Commission, and plaintiff's counsel realized as much, albeit too late, by filing the late cross-appeal. By specifically stating which benefits were payable, the magistrate established a concrete, explicit award which became final 30 days after the Commission issued its decision at 1999 ACO #2. Res judicata therefore bars plaintiff from relitigating a matter covered by the earlier final judgment. *Gose v Monroe Auto Equipment Co*, 409 Mich 147 (1980)." (26a) (footnote omitted)

The WCAC further noted that, had plaintiff timely preserved the issue, "it appears from the record before us that the Appellate Commission would have modified the

magistrate's award to grant the medical benefit for treatment of plaintiff's emotional condition" (26a).

Plaintiff subsequently sought leave to appeal to the Court of Appeals, which was granted on February 13, 2001 (27a). Thereafter, in an opinion dated December 21, 2001, a split panel (2-1) of the Court reversed the WCAC's opinion (28a). The Court held that res judicata did not preclude an award of the mental treatment expenses, where defendant's obligation to pay them was triggered by the magistrate's finding that plaintiff suffered from a work-related emotional disability:

> "We hold that once the magistrate found that plaintiff suffered a work-related mental disability, this triggered defendant's obligation to provide or pay for medical treatment in connection with that disability under § 315(1). Because the magistrate did not affirmatively find or hold that medical treatment in connection with the medical disability was not required for some reason, the failure to include language to that effect in the magistrate's first order was in the nature of a clerical mistake or oversight, and res judicata does not prevent the magistrate's correction of that error." (31a)

The Court further held that workers' compensation magistrates may correct their orders to ensure their decision aligns with the facts they find:

> "The notion that a court may correct clerical errors in its orders is not an alien concept. In fact, a review of the Michigan Court Rules governing both criminal and civil practice contain mechanisms whereby the court, sua sponte, and at any time, may correct clerical errors arising from oversight or omission. See MCR 2.612(A)(1); MCR 6.435(A). In the administrative law arena, caselaw at least suggests that even after mailing a decision, hearing referees retain jurisdiction to correct mistakes contained in their original decisions to ensure the decision aligns with the facts. *Viele v DCMA*, 167 Mich App 571, 577-78; 423 NW2d 270 (1988) modified in part 431 Mich 897; 432 NW2d 171 (1989). " (32a)

Ultimately, the Court of Appeals concluded as follows:

> "While we appreciate the need for finality in judgments, we remain unwilling to exalt form over substance in this case and allow an error to dictate a patently unjust result and thereby strip plaintiff of a benefit to which he is rightfully entitled under the law." (33a)

This Court subsequently granted leave to appeal on November 19, 2002 (36a). Its order granting leave also directed the parties to brief the following issues: "(1) how the words 'reasonable' and 'needed' should be construed in MCL 418.315(1); (2) whether and, if so, when the duty to pay medical expenses for a mental disability arose in this case; and (3) whether plaintiff's claim is barred by res judicata" (36a).

ARGUMENT I

THE WORDS "REASONABLE" AND "NEEDED" SHOULD BE GIVEN THEIR PLAIN MEANING, NOT A DEFINITION REACHED ONLY BY TORTURED GRAMMAR AND A LACK OF COMMON SENSE.

Standard of Review. Questions of statutory construction are reviewed de novo, as questions of law. *DiBenedetto v West Shore Hospital*, 641 Mich 394; 605 NW2d 300 (2000).

In granting leave to appeal in this matter, the Court expressly requested that the parties brief the issue of "how the words 'reasonable' and 'needed' should be construed in MCL 418.315(1)..." (36a). In making this determination, the Court should rely upon a common sense or "plain meaning" interpretation, without the need to resort to tortured grammatical or legal constructions.

A. The word "reasonable" should be interpreted as encompassing any care or treatment based upon sound judgment, which is moderate and fair, but not excessive or extreme.

The relevant portion of the provision at issue, MCL 418.315(1), reads as follows:

> "The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, *reasonable* medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are *needed*." (emphasis supplied)

The emphasized words are the two highlighted by the Court in its order granting leave.

The Legislature's use of the word "reasonable" in this statute has already been considered by this Court on two previous occasions. In *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 383; 521 NW2d 531 (1994), the Court held that the word "reasonable" took into account both function (*i.e.*, that the service is appropriate to the injury), and cost (*i.e.*, that the price of the service is not out of line):

> "Indeed, neither the wording of the order nor the statute is restrictive; neither forecloses a redetermination of the amount of nursing care benefits or conditions modification on specific factors. The furnished services must be 'reasonable' not only in terms of function but also in terms of the compensation paid to the provider of such services. Like the statutory standard, the order provides the necessary flexibility to allow a future determination of 'reasonableness' in keeping with the humanitarian objectives that underlie the WDCA."

See, also, *Sokolek v General Motors Corp*, 450 Mich 133, 144-145; 538 NW2d 369 (1995), in which the Court wrote, "The term, 'reasonable,' refers not only to the services to be performed, but to the compensation to be paid to the provider of such services." This is the only rational result as well.

"Reasonable" is not a word foreign in either a lay or legal context. The dictionary defines it simply as "being in accordance with reason," "not extreme or excessive":

> "**1 a** : being in accordance with reason <a reasonable theory> **b** : not extreme or excessive <reasonable requests> **c** : MODERATE, FAIR <a reasonable chance> <a reasonable price> **d** : INEXPENSIVE
> "**2 a** : having the faculty of reason **b** : possessing sound judgment" Merriam-Webster Dictionary (2003 Online Ed), http://www.m-w.com/cgi-bin/dictionary

Resort to such a dictionary definition is a completely acceptable means of statutory construction. *Duer v Sheriff of Newaygo County*, 420 Mich App 440; 362 NW2d 698 (1980). "Unless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002).

Consequently, when the Legislature used the word "reasonable," it required an approach based upon reason, moderation, and fairness, avoiding an extreme or excessive result and relying upon sound judgment. This is the only common sense reading of the language in question. It is also consistent with the definition set forth in Black's Law Dictionary:

> "**1.** Fair, proper, or moderate under the circumstances <reasonable pay>. **2.** According to reason <your argument is reasonable but not convincing>." Black's Law Dictionary (Seventh Ed, 1999), at 1272.

Clearly, this is the appropriate definition, not the one proposed by defendant.

In an earlier workers' compensation case, *Bower v Whitehall Leather Co*, 412 Mich 172, 185; 312 NW2d 640 (1981), this Court wrote, "Application of a reasonableness standard requires a court to examine the facts and circumstances in each case." Presumably, such an analysis in the instant context would take into account such

factors as whether the treatment is appropriate to the injury, whether it would be considered extreme or excessive, and whether it is unduly expensive given the relief it promises.

A treatment would be appropriate if it addressed the injury sustained and offered a reasonable prospect of relief from that injury. For example, if a claimant suffered a heart attack, open heart surgery or a bypass might be reasonable treatment, but a heart transplant would likely not be. This would probably be too extreme. In a slightly different vein, an injured employee might be assisted by a few weeks of chiropractic manipulation. Extending that treatment for a year or two, without any significant change in the claimant's condition or pain levels, might be considered excessive.

Furthermore, the cost of a treatment, relative to the amount of relief achieved, might also become an issue. A new and untested therapy which was uncommonly expensive, but which offered only a five percent chance of success, might be deemed unreasonable. However, the same procedure with a 95 percent chance of success probably would be reasonable.[1]

Treatment that provided "palliative" relief, providing symptomatic relief without improving the underlying condition, would also be judged by the same standard. Such care has traditionally and consistently been deemed compensable by the Workers'

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[1]While defendant suggests that cost cannot be a component of reasonableness, because that element is already covered by the Health Care Services Rules [2000 AACS, R R 418.10101, *et seq*], this is an incomplete analysis. The Health Care Services Rules, also known as the "cost containment" rules, only apply once a particular method of treatment or care has already been deemed reasonable and necessary pursuant to MCL 418.315(1). Furthermore, it deals only with maximum fees for specified procedures, but does not take into account the bigger question of whether such a fee would be reasonable, given the likelihood and extent of prospective relief the proposed care might provide.

Compensation Appellate Commission, under the appropriate circumstances. See, *e.g.*, *Rayis v Utica Packing Co*, 1991 Mich ACO 723, 725; 1991 ACO #214; *Turner v Jack Demmer Ford*, 1992 Mich ACO 2227; 1992 ACO #705; *Martinchek v Rivertown Family Physicians*, 1997 Mich ACO 2484; 1997 ACO #584; *Aimery v State of Michigan, Dep't of Corrections*, 2002 Mich ACO ___; 2002 ACO #330. If a particular treatment offers the most temporary of relief at a high cost, it might not be reasonable. However, significant palliative relief achieved at a lower cost would be reasonable. Indeed, it would be perverse to rule out payment for symptomatic relief altogether, since such symptomatic treatment is often all that an injured employee requires to enable him or her to go back to work, whether the underlying condition is affected or not. This, of course, is one of the ultimate goals of the Workers' Disability Compensation Act ["WDCA"]. *Bower, supra*, at 182.

Reasonable care, then, would encompass any type of treatment ordered after the exercise of sound judgment, which is moderate and fair, but not excessive or extreme. This determination will be made based upon the facts and circumstances of each individual case. *Bower, supra*.

Defendant offers a lengthy grammatical exposition that plaintiff believes does little to address the issue. This is particularly so when the conclusion reached by defendant actually defies grammar, as well as the rules of statutory construction.

MCL 418.315(1) requires an employer to furnish "reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal..." Defendant suggests that the first word of this statutory

phrase, "reasonable," is somehow defined by the concluding portion, "recognized by the laws of this state as legal." This makes no sense.

First, if the word "reasonable" required that *all* medical treatments be "recognized by the law of this state as legal," there would have been no need to qualify "other attendance or treatment" with that phrase. The rules of statutory construction require that "[e]very word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible." *Baker v General Motors Corp*, 409 Mich 639, 665; 297 NW2d 387 (1980). See, also, *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). This does not occur if "reasonable" is defined in such a manner as to be duplicative of another phrase in the same statute, let alone the same sentence.

Nor does this make sense from a syntactical standpoint. In *Dale v Beta-C, Inc*, 227 Mich App 57; 574 NW2d 697 (1998), the Court of Appeals dealt with the effect of the placement of a comma in a list such as that contained in MCL 418.315(1). It wrote:

> "From a syntactical point of view, the first sentence of § 5 establishes that participants assume the risks of 'obvious and necessary' dangers. The second sentence further defines (by way of example and not limitation) three types of dangers that are 'obvious and necessary.' These examples are separated by commas. *Proper syntax provides that commas usually set off words, phrases, and other sentence elements that are parenthetical or independent.* The punctuation in § 5 suggests that the three examples are independent of and do not modify each other. Moreover, it is a general rule of statutory, as well as grammatical, construction that a modifying clause is confined to the last antecedent unless a contrary intention appears." *Id*, at 68-69.

Defendant's analysis runs contrary to such a construction.

The phrase "or other attendance or treatment recognized by the laws of this state as legal," set off as it is by a comma, is independent of what came before. The modifying clause "recognized by the laws of this state as legal" refers solely to the last antecedent, that being "other attendance or treatment." Defendant's attempts to attach this modifier to prior antecedents should be rejected.

The remainder of defendant's analysis is equally flawed. For instance, defendant suggests that "[t]he conjunction **or other** in section 315(1), first sentence, readily signals that the subject **attendance or treatment recognized by the laws of this state as legal** is defined by the list of particular examples **reasonable medical, surgical, and hospital services and medicines.**" Defendant's Brief, at 12 (emphasis in original). This is illogical.[2]

If "attendance or treatment recognized by the laws of this state as legal" was simply an example of what had come before, the Legislature would presumably have used any word *but* "other." Again, reference to the dictionary's definition of "other" is instructive:

> "**1 a** : being the one (as of two or more) remaining or not included <held on with one hand and waved with the other one> **b** : being the one or ones distinct from that or those first mentioned or implied <taller than the other boys> **c** : SECOND <every other day>
> "**2** : not the same : DIFFERENT <any other color would have been better> <something other than it seems to be>
> "**3** : ADDITIONAL <sold in the U.S. and 14 other countries>
> "**4 a** : recently past <the other evening> **b** : FORMER <in other times>" Merriam-Webster Dictionary (2003 Online Ed), http://www.m-w.com/cgi-bin/dictionary

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[2]It is also not consistent with proper grammar. While "or" is a conjunction, "other" is not. It would actually be an adjective in this context.

As this definition makes clear, an item preceded by the word "other" would be distinct from previous items, not the same as defendant erroneously intimates. As a result, the phrase "other attendance or treatment recognized by the laws of this state as legal" is not merely an example of the "medical, surgical, and hospital services and medicines" that came before it, but instead connotes something different.

Defendant's approach is ungrammatical, illogical, and contrary to established rules of statutory construction. Plaintiff's approach is as consistent with grammar, logic, and the rules of statutory construction as it is based on a common sense reading of the statute in question.

As noted above, "reasonable" medical care should be held to encompass any type of treatment based upon sound judgment, which is moderate and fair, but not excessive or extreme. This determination is a factual one, to be carried out on a case-by-case basis.

One further matter remains to be addressed, that being defendant's contention that *Kushay v Sexton Dairy Co*, 394 Mich 69; 228 NW2d 205 (1975), should be overruled. This contention is wrong for several reasons, not the least of which is the fact that it was never asserted below and has therefore been waived. *Young v Morrall*, 359 Mich 180, 187; 101 NW2d 130 (1960); *Portell v Feldman*, 354 Mich 611, 614; 93 NW2d 305 (1958).

Putting that roadblock aside, defendant's construction of *Kushay* is not supported even by the language it reprints from that matter. The *Kushay* Court referred to services beyond "ordinary household tasks," writing:

> "The language of the statute, 'reasonable medical, surgical and hospital services and medicines or other

> attendance or treatment,' focuses on the nature of the service provided, not the status or devotion of the provider of the service. Under the statute, the employer bears the cost of medical services, other attendance and treatment. If services within the statutory intendment are provided by a spouse, the employer is obligated to pay for them.
>
> "Ordinary household tasks are not within the statutory intendment. House cleaning, preparation of meals and washing and mending of clothes, services required for the maintenance of persons who are not disabled, are beyond the scope of the obligation imposed on the employer. Serving meals in bed and bathing, dressing, and escorting a disabled person are not ordinary household tasks. That a 'conscientious' spouse may in fact perform these services does not diminish the employer's duty to compensate him or her as the person who discharges the employer's duty to provide them." *Kushay*, *supra*, at 74.

Certainly, a family member engaged in "[s]erving meals in bed and bathing, dressing, and escorting a disabled person" is not required to seek or obtain any kind of license. Nor does plaintiff believe this Court should declare that any devoted family member assisting in the care of a disabled family member should be considered to be acting illegally by not obtaining a license to do so. Indeed, defendant has cited to no authority which would impose any such obligation, while our health insurance system is already overtaxed and prohibitively expensive enough without adding this to its burden.

In fact, the Legislature has expressly recognized that family members are entitled to payment for attendant care they might provide, *in the very provision now at issue*. The relevant language reads as follows:

> "Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons." MCL 418.315(1).

Clearly, the Legislature has already placed its stamp of approval on family-provided attendant or nursing care, subject to weekly payment limits. Quite obviously, if the Legislature provided for payment for this type of care in one part of the subsection, it was not trying to outlaw it in another part of that same subsection.

That being so, *Kushay* should *not* be overruled. Defendant's request for that relief should be rejected as contrary to the statute.

B. The word "needed" should be interpreted to refer to any treatment which either cures a condition or offers relief from its effects in some fashion.

Defendant has also offered a somewhat detailed grammatical analysis of the word "needed" in the statute. However, that analysis is overly complicated and somewhat confusing.

Defendant declares that "when" in the phrase "when they are needed" is an adjective,[3] an "adjective of time,"[4] and an adverb.[5] However, plaintiff believes that "when" in this statute serves instead merely as a subordinating conjunction, as the dictionary indicates:

> "Main Entry: **²when**
> "Function: conjunction
> * * *
> "**1 a** : at or during the time that : WHILE <went fishing when he was a boy> **b** : just at the moment that <stop writing when the bell rings> c : at any or every time that <when he listens to music, he falls asleep>
> "**2** : in the event that : IF <a contestant is disqualified when he disobeys the rules>

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[3]Defendant's Brief, at 17.

[4]Defendant's Brief, at 18.

[5]Defendant's Brief, at 18.

> "**3 a** : considering that <why use water at all when you can drown in it -- Stuart Chase> **b** : in spite of the fact that : ALTHOUGH <quit politics when I might have had a great career in it>
> "**4** : the time or occasion at or in which <tomorrow is when we must decide> <humor is when you laugh -- Earl Rovit>" Merriam-Webster Dictionary (2003 Online Ed), http://www.m-w.com/cgi-bin/dictionary

In essence, "when" in this phrase simply means "at the time that" or "if." In other words, reasonable medical or other treatment shall be provided by the employer at the time that it is needed, or if it is needed. Again, this is the common sense reading, and no more need be said.

As a result, the question turns to when a given mode of treatment or attendance is "needed." Defendant again borrows from the same provision to define this term, contending that it must mean "necessary to cure, so far as reasonably possible, and relieve from the effects of the injury."[6] This language is actually used in MCL 418.315(1) to signify the types of adaptive aids for which an employer may be held liable to an injured employee:

> "The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances *necessary to cure, so far as reasonably possible, and relieve from the effects of the injury*. " (emphasis supplied)

While using the highlighted language to define the more general word "needed" may introduce an element of ambiguity into the analysis, plaintiff submits that this is actually a fairly good definition of the term "needed." At the very least, the Legislature's use of

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[6]Defendant actually misquotes this language, whether intentionally or not, as stating "needed to cure," defendant's brief, at 19-20, when the actual text reads "necessary to cure..." MCL 418.315(1).

this phrase as to a particular type of medical care illustrates the type of treatments it was requiring employers to furnish.

In that regard, the type of care required is quite broad, with the only limitation seeming to be the need for that care to either cure or relieve from the effects of the injury. It is clear from the examples listed above that the care in question extends beyond merely that which can cure the underlying condition. The inclusion of such items as eyeglasses, hearing aids, and other appliances demonstrates as much, in that none of these modalities in any way cures the underlying condition. Instead, each merely treats the symptoms of the condition, or "relieve[s] from the effects of the injury," to use the statutory language.

As a result, "needed" should be construed to mean simply any mode of treatment or care which can either cure the effects of the injury, or at the least relieve those effects in some fashion. Of course, the type of care in question would also be limited by the "reasonable" requirement previously discussed.

ARGUMENT II

DEFENDANT'S DUTY TO PAY MEDICAL EXPENSES FOR PLAINTIFF'S MENTAL DISABILITY AROSE WHEN HE RECEIVED A PERSONAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

Standard of Review. Questions of statutory construction are reviewed de novo, as questions of law. *DiBenedetto v West Shore Hospital*, 641 Mich 394; 605 NW2d 300 (2000).

In its order granting leave, this Court directed that the parties brief the issue of "whether and, if so, when the duty to pay medical expenses for a mental disability

arose in this case..." (36a). Defendant contends that no duty arose in this case, but that conclusion is based upon erroneous reasoning as to when the obligation to pay medical expenses initially comes into being.

Rather than looking everywhere else in the WDCA for a determination as to when an employer's duty to pay medical expenses comes into existence, defendant could have and should have looked to the very language under scrutiny in this case – the first sentence of MCL 418.315(1):

> "The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed. "

This language makes clear that an employer's obligation to pay benefits is contingent upon one thing, and one thing only – the occurrence of a personal injury arising out of and in the course of employment. There are no additional conditions placed upon that obligation, provided the treatment is reasonable and needed.

This is the only way the WDCA could rationally and fairly be interpreted. The vast majority of claims are paid without the institution of any litigation. Clearly, the obligation to pay medical expenses cannot be dependent upon the outcome of litigation that may never take place.

The Court of Appeals agreed. In its opinion below, it wrote:

> "Moreover, the issue did not need to be raised because a finding that an employee suffered a work-related injury triggers an employer's obligation to furnish or pay for medical treatment. § 315(1) provides in part:
>
> > "The employer shall furnish, or cause to be furnished, to an employee who receives a

> personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by this state as legal, when they are needed.... After 10 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a worker's compensation magistrate, the worker's compensation magistrate may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed.

"In *Kosiel, supra*, the Supreme Court held that res judicata did not prevent modification of an order with respect to the rate of nursing care compensation because res judicata only applies when the previous order is a final decision. Because the order at issue provided in part for payment of nursing care benefits 'until the further order of the Department,' the Court concluded that the nursing care portion of the order was not 'final' for purposes of res judicata. *Id.* at 380-381. Moreover, the Court found that this conclusion comported with the language of § 315(1), quoted above, which in the first sentence requires an employer to furnish or cause to be furnished to an injured employee medical and other services 'when they are needed.' The Court also noted that the statute requires the employer to bear the cost of 'reasonable' medical services, which may change over time. *Id.* at 382-383.

"We hold that once the magistrate found that plaintiff suffered a work-related mental disability, this triggered defendant's obligation to provide or pay for medical

> treatment in connection with that disability under § 315(1)." (30a-31a)

This analysis is entirely appropriate, and consistent with the language of the WDCA's medical benefits statute.

It should fairly be noted that the Court of Appeals held that the employer's obligation to pay medical expenses arose upon the magistrate's finding that a work-related personal injury occurred. This does not mean that an order is always required, just that a decision was required *in this case,* to establish that a personal injury arising out of and in the course of employment had actually occurred. Obviously, the order confirmed that such an injury had occurred, conclusively establishing the employer's liability for medical expenses as of the date of the injury.

Furthermore, even if an order was required, that order in this matter would be the magistrate's original decision, mailed on December 16, 1996 (7a) and confirmed by the WCAC on January 6, 1999 (14a). In that decision, the magistrate expressly found that plaintiff had established a work-related psychiatric disability: "I further find plaintiff is disabled as the result of his emotional condition and I find that disability to have arisen out of and in the course of his employment" (11a). In fact, the basis for this holding was the testimony of the very expert whose bills are currently in dispute, Dr. Keelin: "I accept Dr. Keelin's conclusions that Mr. Barnowsky could not return to work and that work events in 1994 caused his condition in part and also aggravated his preexisting condition" (12a).

Given these findings, it is crystal clear that the magistrate found that plaintiff suffered from a work-related emotional disability, the result of a personal injury arising out of and in the course of his employment. This, in and of itself, establishes

defendant's duty to pay benefits. That being so, the instant defendant's duty to pay medical benefits arose when the injury occurred, and was merely confirmed by the magistrate's decision (and the WCAC's affirmance). No further finding or directive was required.

The occurrence of an injury requires the payment by the employer of reasonable medical expenses, when they are needed. MCL 418.315(1). Defendant's arguments to the contrary twist statutory language and requirements, and should be rejected.

Defendant correctly notes that MCL 418.831 states that "[n]either the payment of compensation or the accepting of the same by the employee or his dependents shall be considered as a determination of the rights of the parties under this act." However, this is not a statement that there is no obligation to pay benefits prior to the issuance of an order. Instead, it is an indication that the mere fact that weekly benefits or a medical bill is voluntarily paid does not mean that the employer is conceding its right to subsequently contest either the occurrence of a personal injury or any other fact potentially giving rise to liability.

Defendant also suggests that another portion of MCL 418.315(1) conditions liability upon an order that medical expenses be paid. More specifically, defendant points to this language: "If the employer fails, neglects, or refuses so to do, the employee shall be reimbursed for the reasonable expense paid by the employee, or payment may be made in behalf of the employee to persons to whom the unpaid expenses may be owing, by order of the worker's compensation magistrate." *Id.* However, this language does not indicate that the obligation to pay medical expenses does not exist prior to the issuance of an order, but instead reserves the employee's

right to seek an order as a remedy for noncompliance with the obligation previously arising.

Defendant further contends that MCL 418.801(3) confirms that a duty to pay occurs only when an order is entered. However, the language of provision actually indicates otherwise:

> "If medical bills or travel allowance are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, in cases where there is no ongoing dispute, $50.00 or the amount of the bill due, whichever is less, shall be added and paid to the worker for each day over 30 days in which the medical bills or travel allowance are not paid. Not more than $1,500.00 in total may be added pursuant to this subsection." *Id.*

This language does not even make mention of an order. Furthermore, it is not designed to determine when the obligation to pay comes into existence, but instead indicates when a penalty may be assessed for nonpayment or late payment. The trigger for a penalty is not an order, but instead notification by certified mail and the absence of an ongoing dispute, the latter of which may, *but may not*, require an order.

Defendant's additional citation to *Charpentier v Canteen Corp*, 105 Mich App 700; 307 NW2d 704 (1981), does not assist it. *Charpentier* determines when a "ongoing dispute" ends in a litigated case. However, no ongoing dispute would ever arise if the employer or its carrier paid voluntarily and the employee accepted said payments. Again, this is not an equivalent comparison.

By contrast, MCL 418.315(1) is unequivocal, and imposes but one condition on an employer's duty to pay compensation – the occurrence of a personal injury. Such a conclusion is also consistent with the other phrase under examination in this case, requiring that medical treatment or care be furnished "when they are needed." *Id.*

Quite obviously, medical care is most needed immediately following an injury, not after years of litigation have concluded. Defendant's construction clearly does violence to this clear language, a fact also pointed out by the Court of Appeals below (31a).

Furthermore, the history of MCL 418.315(1), and its predecessors, makes it clear that the Legislature has eliminated any requirement that an order be issued before reasonable and needed medical care must be provided.

The original provision provided solely as follows: "During the first three weeks after the injury the employer shall furnish, or cause to be furnished, reasonable medical and hospital services and medicines when they are needed." 1912 (1st Ex Sess) PA 10, part 2, § 4. In 1919, the duration was extended to 90 days. 1919 PA 64.

In 1943, the duration was once more extended, this time to six months after the injury. Further provision was made for an additional six months of treatment "in the discretion of the commission..." This order could only follow a written request from the injured employee and an opportunity for the employer or insurer to seek a hearing on the request:

> "The employer shall furnish, or cause to be furnished, reasonable medical, surgical, and hospital services and medicines when they are needed, for the first 6 months after the injury and thereafter for not more than an additional 6 months in the discretion of the commission, upon written request of the employee to the commission and after the employer or his insurer has been given an opportunity to file objections thereto and to be heard thereon." 1943 PA 245.

In other words, an order was now required for the second six months of medical care. However, the triggering event for employer liability for the first six months of care was still solely the occurrence of a personal injury arising out of and in the course of

employment. This conclusion can scarcely be disputed, since an order was required for the additional six-month period, but *not* for the first.

This theme was continued in the 1949 amendments, which authorized three additional six-month periods of medical treatment upon the receipt of orders so requiring. 1949 PA 238. Again, an order was required for any period beyond the initial six months of care, but the sole event triggering liability during the first six months was the personal injury.

It was not until 1955 that the Legislature removed the limits on the duration of medical care. However, even then, the employee had to seek approval for care beyond the initial six months following an injury, in six-month increments:

> "The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of his employment, reasonable medical, surgical and hospital services and medicines or other attendance or treatment recognized by the laws of this state as legal, when they are needed, for the first 6 months after the injury and thereafter for such additional 6 month periods as the commission may in its discretion order. Such additional 6 month periods shall be granted only upon written request of the employee to the commission for each period and after the employer or his insurer has been given an opportunity to file objections thereto and to be heard thereon." 1955 PA 250.

As a result, an order was *still* required, but only after the first six months. The triggering event for the first six months remained the occurrence of a personal injury arising out of and in the course of employment.

Finally, in 1965, the Legislature eliminated the six-month period mechanism and the requirement that the employee file a written request seeking extended care:

> "The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of

> and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed." MCL 412.4, as amended by 1965 PA 44.

No longer did an injured employee have to seek an order requiring care beyond the initial six months. Instead, an employer was obliged to provide such care for *any* period when it was needed. Defendant's proposed construction would effectively write the order requirement back into the Act, a clearly inappropriate result. A court "cannot write into the statutes provisions that the legislature has not seen fit to enact." *Paselli v Utley*, 286 Mich 638, 643; 282 NW 849 (1938). See, also, *Lesner v Liquid Disposal, Inc*, 466 Mich 95, 101-102; 625 NW2d 782 (2002).

In fact, in addition to eliminating the requirement that an employer file written requests for care beyond the first six months and obtain orders requiring that the employer furnish it, the 1965 Legislature added new language that should prominently figure into the current analysis. That language currently reads as follows:

> "After 10 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a worker's compensation magistrate, the worker's compensation magistrate may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed." MCL 418.315(1).

Defendant's brief does not directly address this language, although a case to which it cites does – *Blackwell v Citizens Ins Co of America*, 457 Mich 662; 579 NW2d 889 (1998).

The *Blackwell* Court held that this language permitted the injured employee to direct the management of his or her medical care after the initial 10 days had passed, and required an *employer* who objected to the chosen form of treatment to seek an order:

> "The claimant's right to choose the provider is subject only to the employer's and carrier's option to petition the worker's compensation bureau for resolution of a dispute if either is dissatisfied with the claimant's choice. *Id.* Implicit in a carrier's duty under the WDCA to pay for reasonable medical treatment and its right to object to a claimant's choice of provider is its ability to refer the claimant to a particular provider or recommend that a claimant get a second opinion. That the WDCA permits a carrier to undertake such actions does not impose any duty on it to do so.
>
> "Case law development acknowledges this active role for claimants, with carriers generally becoming active only when dissatisfied with a claimant's choices."

In other words, an employee has no obligation to obtain an order permitting him or her to seek medical care. There is simply no such requirement. Instead, the personal injury gives rise to the employer's duty to provide medical care, without any other action on the part of the injured employee. If the employer does not approve of the treatment sought, *it* has the duty to seek an order requiring that the provider o nature of the treatment be changed. Even then, the employer's duty to pay for disputed treatment could be terminated only prospectively, "from the date the order is mailed." MCL 418.315(1). Consequently, an order is not required to start the employer's duty to pay

for reasonable and needed medical care. Instead, one is required to *stop* that duty. While citing *Blackwell*, defendant completely misses its significance to this matter.

Defendant's duty to pay medical expenses for plaintiff's mental disability arose upon the occurrence of the work-related personal injury that gave rise to that disability. MCL 418.315(1). This is consistent with the history of that provision, as well as its current language and case law construing it. Defendant's construction, suggesting that no duty arises before an order is entered, simply cannot withstand scrutiny when this authority is considered.

ARGUMENT III

RES JUDICATA DOES NOT BAR PLAINTIFF'S CLAIM FOR PSYCHOLOGICAL TREATMENT EXPENSES, WHERE DEFENDANT'S DUTY TO PAY SUCH EXPENSES WAS CONFIRMED BY THE MAGISTRATE'S ORIGINAL FINDING OF A MENTAL DISABILITY PERSONAL INJURY AND NO FURTHER, EXPRESS ORDER WAS REQUIRED.

Standard of Review. This Court reviews legal issues de novo, and may reverse a decision of the WCAC if it applies erroneous legal reasoning or operates within the wrong legal framework. Const 1963, Art VI, §28; MCL 418.861a(14); *Mudel v Great Atlantic & Pacific Tea Co,* 462 Mich 691; 614 NW2d 607 (2000); *DiBenedetto v West Shore Hospital*, 641 Mich 394; 605 NW2d 300 (2000); *Oxley v Dep't of Military Affairs*, 460 Mich 536; 597 NW2d 89 (1999).

The third issue this Court directed the parties to brief concerned "whether plaintiff's claim is barred by res judicata" (36a). The Court of Appeals correctly held that this was not the case.

The premise underlying defendant's argument to the contrary is that medical expenses for plaintiff's psychological treatment were never ordered, which it equates to a denial of such relief. However, as demonstrated in Argument II, above, this is a misguided position.

Pursuant to MCL 418.315(1), an employer is obliged to furnish an inured employee with reasonable and needed medical expenses upon the occurrence of a personal injury arising out of and in the course of employment. The magistrate's initial decision confirming that plaintiff had suffered a psychiatric personal injury also confirmed this duty. It did not have to be explicitly spelled out, because it was implicit in the finding of a personal injury.

This is consistent with the WCAC's holding in *Hinton v Jonesfield Video Connection*, 1999 Mich ACO 1134; 1999 ACO #258, in which it wrote:

> "Technically, defendant may be correct in stating that the requirement for payment of medical bills was not set forth specifically in the green sheet. However, common sense dictates that when a Magistrate finds a work related injury and awards benefits to be paid during the time of surgery for the injury as well as recuperative time for the surgery, the requirement that the employer pay medical bills incurred as a result of that surgery is implicit." *Id,* at 1135.

The same type of reasoning is appropriate in the instant matter, where plaintiff is seeking payment for treatment provided by the very medical expert upon whom the magistrate relied in finding work-related psychological disability, Dr. Keelin (22a). By accepting Dr. Keelin's testimony that the psychiatric disability was compensable, common sense dictates that the magistrate was finding as well that the employer should pay this expert's bill.

In its opinion below, however, the WCAC attempted to distinguish *Hinton*, writing:

> "Here, in contrast to *Hinton*, the 'green sheet' was not left blank. Instead, the magistrate very explicitly and precisely ordered the payment of particular medical benefits (those related to treatment of plaintiff's right wrist) in both the opinion and on the 'green sheet' order form. The magistrate specifically delineated which medical benefits were to be paid by defendant. Under such circumstances, plaintiff had an obligation to appeal the narrowness of the medical award to the Commission, and plaintiff's counsel realized as much, albeit too late, by filing the late cross-appeal. By specifically stating which benefits were payable, the magistrate established a concrete, explicit award which became final 30 days after the Commission issued its decision at 1999 ACO #2. Res judicata therefore bars plaintiff from relitigating a matter covered by the earlier final judgment. *Gose v Monroe Auto Equipment Co*, 409 Mich 147 (1980)." (26a) (footnote omitted)

This analysis is erroneous.

There is a good reason why the magistrate crafted a specific order for care relative to plaintiff's right wrist problems – she had to distinguish the compensable *right* wrist problems from plaintiff's *left* wrist problems, which were *not* found to be work-related (11a). This required a specific order detailing defendant's obligations under the circumstances. However, no such division occurred with regard to plaintiff's emotional disability. It was found to be compensable *in its entirety*, necessitating no express exclusions or inclusions as with the wrist disability claims.

As a result, the lack of any specific order as to medical care for the psychological condition did not constitute a denial of same. Instead, it simply left fully intact defendant's duty to pay mental treatment expenses upon the finding of a psychological personal injury. Conversely, the magistrate's express order that defendant pay only for

right wrist care excluded the noncompensable portion of his physical claim by implication.

Nor did the WCAC deny psychological treatment expenses on appeal, as defendant intimates. The WCAC refused to consider plaintiff's request that defendant's duties be made more explicit on *procedural* grounds, more specifically plaintiff's failure to file a timely cross appeal (17a-18a).

As a result, defendant's duty to pay for psychological treatment has never been denied. It arose upon the occurrence of plaintiff's personal injury, MCL 418.315(1), and was implicit in the magistrate's order confirming that personal injury absent any language otherwise limiting defendant's duties.

That being so, res judicata is simply inapplicable to this matter. While res judicata does apply in a workers' compensation context, *Pike v City of Wyoming*, 431 Mich 589; 433 NW2d 768 (1988); *Kosiel v Arrow Liquors Corp*, 446 Mich 374; 521 NW2d 531 (1994), it applies only to bar the relitigation of matters which could have been litigated, but were not. *Gose v Monroe Auto Equipment Co*, 409 Mich 147; 294 NW2d 165 (1980). The compensability of plaintiff's mental disability *was* litigated, and it necessarily included the provision by his employer of treatment for that condition. Res judicata is therefore simply irrelevant in this matter.

This was essentially the holding of the Court of Appeals in this case:

> "We hold that once the magistrate found that plaintiff suffered a work-related mental disability, this triggered defendant's obligation to provide or pay for medical treatment in connection with that disability under § 315(1). Because the magistrate did not affirmatively find or hold that medical treatment in connection with the medical disability was not required for some reason, the failure to include language to that effect in the magistrate's first order was in

> the nature of a clerical mistake or oversight, and res judicata does not prevent the magistrate's correction of that error." (31a)

This reasoning is appropriate, and should be affirmed. Defendant's obligation to pay for plaintiff's psychological treatment arose with his personal injury, and was confirmed by the magistrate's decision. There was no need for an affirmative confirmation of this duty as well, and res judicata is therefore inapplicable.

This effectively puts to rest defendant's contention that plaintiff had to take some affirmative step to "correct" the magistrate's original order. In point of fact, defendant originally paid psychological treatment expenses after the magistrate's first opinion, and the need to return to the Bureau resulted solely from defendant's subsequent decision to end those payments. Plaintiff was never obliged to add anything to the original order, and only sought a second order to confirm that fact for defendant.

It should further be noted that this Court has long permitted "corrections" of mistakes in workers' compensation orders, provided the correction does not involve a reopening of the case for a redetermination of the basic facts. An alteration simply to make an order conform to the findings of fact is permitted, as this Court held in *McLean v Eaton Mfg Co*, 286 Mich 285, 294; 282 NW 150 (1938):

> "Appellant contends that the Department had no power to amend its original order, since this was, in effect, equivalent to the granting of a rehearing. *Guss v Ford Motor Co*, 275 Mich 30; 265 NW 515. The rule of the *Guss* Case, precluding the granting of rehearings, does not mean that the Department may not correct a mistake in its original order. A rehearing involves a reopening of the case for a redetermination of basic facts. *Tulk v Murray Corporation*, 276 Mich 630; 268 NW 761. This the department may not permit. However, correction of the mistake in the original order in the instant case involves merely making the department's order conform to its previous actual finding of

> basic facts. This is permissible (*Wilcox v Clarage Foundry, etc., Co*, 199 Mich 79; 165 NW 925; *Fawcett v Dept. of Labor & Industry*, 282 Mich 489; 276 NW 528) and may be required by mandamus. *Fawcett v Dept. of Labor & Industry, supra*."

Accord: *Hunt v Genesee Foundry, Pattern & Engineering Co*, 353 Mich 205, 208; 91 NW2d 286 (1958); *Dean v Great Lakes Casting Co*, 78 Mich App 664; 261 NW2d 34 (1978); *Viele v DCMA*, 167 Mich App 571, 577; 423 NW2d 270; lv den, 431 Mich 897 (1988). If the mere reconciliation of an order with the facts as found does not constitute a rehearing, res judicata obviously would not apply.

In fact, *McLean* is particularly apt to the instant matter. In that case, the original order had failed to account for the charges of two physicians, although the intention was to provide for their payment. Of course, that was the intention of the magistrate in the instant case as well, as she indicated in her second opinion (23a). The *McLean* Court held that the order could be amended, to make it consistent with the facts as found.

Again, this is compatible with the analysis of the Court of Appeals below:

> "The notion that a court may correct clerical errors in its orders is not an alien concept. In fact, a review of the Michigan Court Rules governing both criminal and civil practice contain mechanisms whereby the court, sua sponte, and at any time, may correct clerical errors arising from oversight or omission. See MCR 2.612(A)(1); MCR 6.435(A). In the administrative law arena, caselaw at least suggests that even after mailing a decision, hearing referees retain jurisdiction to correct mistakes contained in their original decisions to ensure the decision aligns with the facts. *Viele v DCMA*, 167 Mich App 571, 577-78; 423 NW2d 270 (1988) modified in part 431 Mich 897; 432 NW2d 171 (1989). " (32a)

Consequently, even if defendant's duty to pay medical expenses did not automatically arise with the personal injury, the magistrate was permitted to amend her original order

to make her intention clear and to ensure that her order and opinion were consistent. Either way, defendant was properly ordered to pay the bills in question.

Should this Court disagree, it should at the very least require defendant to pay any bills incurred after the closing date of the original trial. This is the determinative date for res judicata purposes. *Askew v Ann Arbor Public Schools*, 431 Mich 714, 723-725; 433 NW2d 800 (1988). Thereafter, the original award is subject to change, particularly given the flexible nature of a workers' compensation award. As this Court held in *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 381; 521 NW2d 531 (1994), "an award of compensation 'until the further order' signifies that the order remains in effect until the award is terminated or changed." If the magistrate's second decision was deemed to be a change rather than a confirmation, she therefore possessed the power to make it for, at the least, those periods not covered by the first decision.

However, plaintiff submits that the most appropriate result is one that finds that the magistrate's first decision, establishing a mental disability personal injury arising out of and in the course of plaintiff's employment, confirmed defendant's duty to pay treatment expenses for that duty, without regard to any further order or finding.

Any other conclusion would result in just what the Court of Appeals properly tried to avoid:

> "While we appreciate the need for finality in judgments, we remain unwilling to exalt form over substance in this case and allow an error to dictate a patently unjust result and thereby strip plaintiff of a benefit to which he is rightfully entitled under the law." (33a)

This should be the bottom line, for the obvious legal, logical, and humanitarian reasons.

RELIEF

WHEREFORE Plaintiff-Appellee JOSEPH A. BARNOWSKY respectfully requests that this Honorable Supreme Court affirm the decision of the Court of Appeals directing that defendant pay reasonable and needed medical expenses for the treatment of his psychological disability. At the very least, such expenses should be ordered paid after the closing date of the original hearing. Plaintiff further requests any other relief to which he may be entitled.

Respectfully submitted,

DARYL ROYAL (P33161)
Attorney Of Counsel to Martha M. Glaser,
Attorney for Plaintiff-Appellee
22646 Michigan Avenue
Dearborn, Michigan 48124-2116
(313) 730-0055

MARTHA M. GLASER (P37678)
Attorney for Plaintiff-Appellee
7 West Square Lake Road
Bloomfield Hills, MI 48302
248) 473-1441

Dated: February 18, 2003